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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,792	08/13/2001	Keith E. Olson	163.1213US01	8268
23552	7590	02/28/2005	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			HARDEE, JOHN R	
			ART UNIT	PAPER NUMBER
			1751	
DATE MAILED: 02/28/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/928,792

Applicant(s)

OLSON ET AL.

Examiner

John R. Hardee

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-11, 13-23, 26 and 27 is/are pending in the application.
- 4a) Of the above claim(s) 3, 8, 9, 11, 13, 15-17, 20-23, 26 and 27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-6, 10, 14, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 18, 2005 has been entered.

### ***Election/Restrictions***

2. Applicant does not have a right to change the elected species upon filing an RCE, and the applicant did not suggest what the new election might be. As a courtesy to the applicant however, the examiner did attempt to contact Mr. Daley to elect an additional species. The attempt to contact Mr. Daley was unsuccessful.

As a further courtesy to applicant, this action is NOT FINAL.

3. Claims 3, 8, 9, 11, 13, 15-17, 20, 21, 22, 23, 26 and 27 remain withdrawn from consideration by the examiner as being drawn to embodiments non-elected with traverse, no generic claims having been found allowable.

### ***Claim Rejections - 35 USC § 103***

4. Claims 1, 2, 4-6, 10, 14, 18 and 19 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Miracle et al., US 5,576,282. The reference discloses

Art Unit: 1751

bleaching compositions which may be formulated as granular or powder form laundry detergents, or they may be tabletted or granular automatic dishwashing detergents (col. 11, lines 30+). The compositions typically comprise builders, such as tripolyphosphates, carbonates, bicarbonates and sesquicarbonates (col. 12, lines 18+). Solid compositions typically comprise 10-80% of builders. Use of combinations of ingredients, each disclosed as being used for the same purpose, is obvious, absent unexpected results. Preferred detergent compositions comprise mixtures of nonionic and anionic surfactants (col. 10, lines 10+). Addition of enzymes is disclosed at col. 9, line 61. The compositions can be formulated in any mixing, densifying and granulating equipment that is currently available. Use of an aqueous slurry is disclosed at col. 30, lines 35+. This makes obvious the use of water to bring about reaction of carbonate and bicarbonate, and anything dried out of an aqueous slurry would perforce be hardened. The examiner takes the position that extruders are commonly used mixing equipment in the surfactant art. This reference differs from the claimed subject matter in that it does not disclose a composition which reads on applicant's claims with sufficient specificity to constitute anticipation.

It would have been obvious at the time the invention was made to make such a composition, because this reference teaches that all of the ingredients recited by applicants are suitable for inclusion in a solid detergent composition. The person of ordinary skill in the surfactant art would expect the recited compositions to have properties similar to those compositions which are exemplified, absent a showing to the contrary. Regarding the newly added "20 minute" limitations, these recite the physical

Art Unit: 1751

properties of the compositions. As the material limitations of the recited compositions can be met by following the teachings of the reference, it would appear that the physical limitations would or could follow inherently. It is well settled that the properties of a composition are not separable from its chemical makeup. Carbonates, bicarbonates and sesquicarbonates are clearly water conditioners, as they affect the pH of the compositions into which they are dissolved. Regardless of whether or not the carbonate, bicarbonate, sesquicarbonate and water are being disclosed as builders or binders, their use in the recited percentages is clearly motivated by the teachings of the reference.

In the case where the claimed ranges overlap or lie inside ranges disclosed by the prior art, a *prima facie* case of obviousness exists. *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed Cir. 1990).

### ***Response to Arguments***

5. Applicant's arguments are addressed in the rejection above.
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (571) 272-1318. The examiner can normally be reached on Monday through Friday from 8:00 until 4:30. In the event that the examiner is not available, his supervisor, Dr. Yogendra Gupta, may be reached at (571) 272-1316.

Art Unit: 1751

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "J. Hardee", written in a cursive style.

John R. Hardee  
Primary Examiner  
February 25, 2005